

Part 127—Certification and Operations of Scheduled Air Carriers with Helicopters

This change incorporates two Special Federal Aviation Regulations (SFAR):

SFAR 36-6, Development of Major Repair Data, adopted January 21, 1994, which revises SFAR 36; and

SFAR 38-9, Certification and Operating Requirements, adopted June 18, 1993, which revises 38-2.

Bold brackets indicate the most recently changed or added material.

Page Control Chart

Remove Pages	Dated	Insert Pages	Dated
SFAR Pages S-1 through S-52	—	SFAR Pages S-1 through S-56	Ch. 1

Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00-44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.

adopts a new Special Federal Aviation Regulation (SFAR) that provides for the use of data for accomplishing major repairs that have been developed by repair stations, air carriers, air taxis, and commercial operations of large aircraft but which have not been specifically approved by the FAA. The SFAR will relieve affected certificate holders of the burden attendant to obtaining FAA-approval of major repair data on a case-by-case basis if certain requirements necessary in the interest of safety are met. The SFAR is also needed to develop information upon which to base a permanent rule change.

FOR FURTHER INFORMATION CONTACT: Donald A. Schroeder, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

The aviation industry in the United States and abroad has grown substantially during the last ten years. Paralleling its rapid growth and numerous technological advances are significant changes in the operating environment in which airmen, air agencies, and aircraft operators function.

To enable the FAA to become more responsive to the needs of the general public and the aviation community in fulfilling the agency's aviation safety responsibilities, the FAA issued Notice No. 75-9 (40 FR 8585; February 28, 1975), inviting all interested persons to submit proposals for consideration during the Operations Review Program.

In response to that invitation, the FAA received more than 5,000 individual comments contained in 123 submissions. Based on those comments and on the Compilation of Proposals, the FAA prepared a number of working documents for the Operations Review Conference held in Arlington, Virginia, on December 1-25, 1975. The FAA distributed those documents to each person who participated in the Operations Review Program and to all other interested persons who requested them.

The Operations Review Conference was attended by more than 600 persons. Various committees discussed all the scheduled agenda items during the conference. Summaries were given by the FAA Committee Chairman at the close of the discussions on each agenda item. Persons present were given the opportunity to correct those oral summaries. Those summaries were edited and combined with an attendee list for the conference and with transcripts of certain plenary session speeches and were distributed to all attendees and to all persons requesting them in accordance with a Notice of Availability (Notice No. 75-9A; 41 FR 9413; March 4, 1976).

This amendment deals with Proposal No. 882, concerning § 145.51, that was submitted by the Air Transport Association for the Operations Review Program and is being issued as a part of that program.

Discussion of Amendment

Under § 145.51 of the Federal Aviation Regulations (FAR), repair stations are allowed to approve aircraft, airframes, aircraft engines, propellers, or appliances for return to service after maintenance, preventive maintenance, or alterations. However, in the case of major repairs

holders have, in the past, been required to submit major repair data and supporting information to FAA Regional Offices on a case-by-case basis for approval. Due to the large number of major repairs being performed and the financial need to have damaged aircraft repaired and returned to service as quickly as possible, the requirement for applying for case-by-case approvals has proven to be especially burdensome to affected certificate holders. In this connection, the FAA has recently been receiving an increasing number of petitions for exemption from the provisions of §§ 121.379 and 145.51. Several exemptions have been issued, subject to a number of conditions and limitations, allowing air carriers and repair stations to utilize major repair data they have developed which have not been specifically FAA-approved. Based on the experience gained under these exemptions and in view of the increasing number of exemption requests, the FAA believes it appropriate to adopt an SFAR to provide similar relief to all affected certificate holders and to enable the FAA to obtain additional information that is needed to determine the course of action to be taken with respect to §§ 121.379(b), 127.140(b), and 145.51.

In general, the SFAR being adopted is based on the DAS provisions of FAR part 21 and the conditions and limitations contained in the related exemptions which have been granted. The SFAR requires those desiring relief to have available qualified engineering personnel. The preparation of an FAA-approved procedure manual for the development of major repair data is also required. In addition, records relating to the major repair data developed and the products incorporating the major repairs are required to be kept. The FAA believes these requirements are necessary to ensure that an adequate level of safety is maintained.

As indicated, affected certificate holders have been subjected to a severe burden under the provisions of §§ 121.379(b), 127.140(b), and 145.51, and the FAA believes that under the currently existing circumstances immediate relief is necessary. However, unless major repair data are developed under a system with adequate safeguards, using the data for a repair could result in a serious hazard to safety with respect to any aircraft incorporating the repair. The SFAR being adopted will provide an alternate means of compliance that will assure an equivalent level of safety to the existing requirements. Because of this and since no additional burden will be placed on any person, it is found that notice and public procedure hereon are impracticable and unnecessary and that good cause exists for making the amendment effective in less than 30 days. Nevertheless, since the SFAR is being adopted without prior notice and public procedure and is intended as interim rule-making action to enable the FAA to obtain information upon which to base a permanent rule change, interested persons are invited to submit comments on the new SFAR. Comments should be mailed to the Rules Docket, AGC-24, Federal Aviation Administration, Washington, DC 20591 and should reference the SFAR number. The FAA will consider all comments received in connection with any subsequent rule-making action to be taken with respect to the SFAR, and, if found to be justified, the FAA will initiate rule-making action with respect to the SFAR prior to its specified termination date.

Drafting Information

The principal authors of this document are Mr. Eli Newberger, Flight Standards Service, and Mr. Samuel Podberesky, Office of the Chief Counsel.

The Amendment

Accordingly, Special Federal Aviation Regulation No. 36 is adopted effective January 23, 1978.

Special Federal Aviation Regulation 36-1

Operations Review Program Amendment No. 2B; Development of Major Repair Data

Adopted: January 18, 1980

Effective: January 23, 1980

(Published in 45 FR 5677, January 24, 1980)

SUMMARY: This amendment extends the effectivity of a current Special Federal Aviation Regulation (SFAR) which provides for the use of data for accomplishing major repairs that have been developed by repair stations, air carriers, air taxis, and commercial operators of large aircraft but which have not been specifically approved by the FAA.

FOR FURTHER INFORMATION CONTACT: Eli S. Newberger, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

SFAR 36, which became effective January 23, 1978, was issued to relieve qualifying certificated air carriers, operators, and repair stations of the burden of obtaining FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedure requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. The termination date for SFAR 36 is January 23, 1980, and authorizations issued to date under SFAR 36 are effective for a period of 2 years.

At the time the termination date of SFAR 36 was established, it was anticipated that sufficient experience would be accumulated in 2 years and the termination date for SFAR 36 and each authorization issued under this SFAR was so established. However, most of the affected certificate holders did not utilize the provisions of this SFAR until recently and the FAA, therefore, does not currently have sufficient information upon which to base a permanent rule change. The reasons which justified the adoption of SFAR 36 still exist, and in order to gain the necessary experience it is in the public interest to extend the termination date of SFAR 36 from January 23, 1980, to January 23, 1982. So that previously authorized certificate holders will not be subjected to the unnecessary burden of requalifying upon expiration of the initial 2-year period, the amendment provides that each authorization issued under this SFAR has an effective period from the date of issuance until January 23, 1982. This rule extension should provide ample time for an effective evaluation of the need for, and provisions to be incorporated into, a permanent rule change.

Since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedure hereon are unnecessary and it may be made effective in less than 30 days.

Special Federal Aviation Regulation 36-2

Development of Major Repair Data

Adopted: November 3, 1981

Effective: January 23, 1982

(Published in 46 FR 58651, December 3, 1981)

SUMMARY: This amendment extends the effectivity of Special Federal Aviation Regulation (SFAR) No. 36 which provides that repair stations, air carriers, air taxis, and commercial operators of large aircraft may accomplish major repairs using self-developed repair data which have not been specifically approved by the FAA.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sirkis, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION: SFAR 36, which became effective January 23, 1978, was issued to relieve qualifying certificated air carriers, operators, and repair stations of the burden of obtaining FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedural requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. However, most of the affected certificate holders did not utilize the provisions of SFAR 36 until it was well into its second year and near its expiration date of January 23, 1980. Since the FAA did not have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended an additional 2 years. The termination date for SFAR 36 is January 23, 1982, and authorizations issued to date under SFAR 36 are effective for a period of 2 years.

The FAA will initiate rulemaking to make the authorization issued under SFAR 36 a permanent part of the Federal Aviation Regulations. The reasons which justified the adoption of SFAR 36 still exist, and in order to allow time for completion of the permanent rule change, it is in the public interest to extend the termination date of SFAR 36 from January 23, 1982, to January 23, 1984. So that previously authorized certificate holders will not be subjected to the unnecessary burden of requalifying upon expiration of the initial 2-year period, the amendment provides that each authorization issued under this SFAR has an effective period from the date of issuance until January 23, 1984. This rule extension should provide ample time for provisions to be incorporated into a permanent rule change.

Since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures hereon are unnecessary, and the amendment may be made effective in less than 30 days.

been determined that: the rule change does not involve a major change under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that an evaluation is not required.

Special Federal Aviation Regulation 36-3

Development of Major Repair Data

Adopted: January 6, 1984

Effective: January 31, 1984

(Published in 49 FR 4354, February 3, 1984)

SUMMARY: This amendment extends the effectivity of Special Federal Aviation Regulation (SFAR) No. 36, which provides that repair stations, air carriers, air taxis, and commercial operators of large aircraft may accomplish major repairs using self-developed repair data which have not been specifically approved by the FAA. In addition, the regulation will continue to provide relief for persons from the burden of obtaining FAA approval of repair data on a case-by-case basis and allow time for the FAA to incorporate the SFAR provisions into the regulations.

Comments must be received on or before April 3, 1984.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 17551, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Angelo R. Mastrullo, General Aviation and Commercial Branch, AWS-340, Aircraft Maintenance Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8203.

SUPPLEMENTARY INFORMATION:

Background

SFAR 36, which became effective on January 23, 1978, was issued to relieve qualifying certificated air carriers, air taxis, commercial operators, and repair stations of the burden of obtaining FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedural requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. However, most of the affected certificate holders did not realize the provisions of SFAR 36 until it was well into its second year and near its expiration date of January 23, 1980. Since the FAA did not have sufficient data upon which to base

reasons unrelated to the subject matter of SFAR 36, the rulemaking project that had been continuing was canceled, and no new project is presently being developed. Consequently, to provide continuity and avoid hardship to those relying on SFAR 36 as it presently exists, the FAA finds it necessary to extend the effectivity of SFAR 36 for an additional 5 years, to January 23, 1989.

Paperwork Reduction Act

Information collection requirements in this regulation (SFAR 36) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 2120-0507.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 36 and the authorizations issued under SFAR 36 is January 23, 1984. The reasons which justified the adoption of SFAR 36 still exist; and to avoid hardship to those relying on the provisions of SFAR 36, it is in the public interest to extend the termination date of SFAR 36 from January 23, 1984, to January 23, 1989. So that previously authorized certificate holders will not be subjected to the unnecessary burden of requalifying upon expiration of the initial 2-year period, the amendment provides that each authorization issued under this SFAR has an effective period from the date of issuance until January 23, 1989. This rule extension should provide ample time for provisions to be incorporated into a permanent rule change.

Since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures hereon are unnecessary, and the amendment may be made effective in less than 30 days. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address specified above. All communications received on or before April 3, 1984, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Adoption of the Amendment

In consideration of the following, the Federal Aviation Regulations are amended effective January 31, 1984.

(Sections 313(a), 604 and 607, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, 1424, and 1427); 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983))

NOTE: The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major action under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that an evaluation is not required.

SUMMARY: This amendment extends the effective date of Special Federal Aviation Regulation (SFAR) No. 36 which provides that repair stations, air carriers, air taxis, and commercial operators of large aircraft may accomplish major repairs using self-developed repair data which have not been specifically approved by the FAA. In addition, the regulation will continue to provide an alternative from the need to obtain FAA approval of repair data on a case-by-case basis and allow additional time for the FAA to incorporate the SFAR provisions into the regulations.

ADDRESS: Comments on this rule may be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 17551, 800 Independence Ave., SW., Washington DC 20591. Comments delivered must be marked Docket No. 17551. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 pm., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jess Lewis, Continued Airworthiness Staff, Aircraft Engineering Division, AWS-100, Office of Airworthiness, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC 20591; telephone (202) 267-9287.

SUPPLEMENTARY INFORMATION:

Background

SFAR 36, which became effective on January 23, 1978, was issued to provide qualifying certificated air carriers, air taxis, commercial operators, and repair stations with an alternative to the need to obtain FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedural requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. However, most of the affected certificate holders did not utilize the provisions of SFAR 36 until it was well into its second year and near its expiration date of January 23, 1980. Since the FAA did not have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended an additional 2 years, to January 23, 1982.

Although the FAA initiated rulemaking to consolidate certain authorizations along with those issued under SFAR 36 and make them a permanent part of the Federal Aviation Regulations (FAR) the rulemaking action was not completed and the termination date for SFAR 36 was extended two additional periods. The first period was for 2 years and the second period, with a termination date of January 23, 1989, was for 5 years. Each authorization issued under the SFAR was made effective from the date of issuance. There are presently more than 30 certificated air carriers and repair stations holding SFAR 36 authorizations. For reasons unrelated to the subject matter of SFAR 36, the rulemaking project that was to permanently codify SFAR 36 was canceled. A new regulatory project which will codify the provisions of SFAR 36 into FAR 21 (14 CFR part 21) is underway. This new project broadens existing delegation of aircraft certification and approval functions and extends these functions to domestic organizations which possess the necessary technical and managerial qualifications. These changes are beyond the scope of SFAR 36 and are likely to stimulate significant interest and comment. This will prevent codification before SFAR 36 expires. Consequently, to provide continuity and avoid hardships to those relying on SFAR 36 as it presently exists, the FAA finds it

The termination date for SFAR 36 and the authorizations issued thereunder is January 23, 1989. The reasons which supported the adoption of SFAR 36 still exist and, to avoid hardships to those relying on the provisions of SFAR 36, it is in the public interest to extend the termination date of SFAR 36 from January 23, 1989, to January 23, 1994. The amendment also extends the effective date of each current authorization issued under this SFAR from the date of issuance until January 23, 1994. This rule extension should provide ample time for provisions to be incorporated into a permanent rule change.

This amendment is necessary to provide regulatory continuity and avoid hardship and costs to those relying on SFAR 36 as it presently exists. Since this amendment continues in effect the provisions of a currently effective STAR and imposes no additional burden on any person, we find that notice and public procedures hereon are unnecessary. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. The FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Accordingly, it has been determined that: the rule change does not involve a major action under Executive Order 12291, it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121, 127, 135, and 145 (14 CFR parts 121, 127, 135, and 145) effective January 23, 1989:

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

SUMMARY: This amendment adopts changes to office titles and certain terminology in the regulations that were affected by a recent agencywide reorganization. These changes are being made to reflect delegations of authority that were changed, as well as offices that were renamed or abolished and replaced with new office designations. These changes are necessary to make the regulations consistent with the current agency structure.

FOR FURTHER INFORMATION CONTACT: Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional offices. The most significant change is that certain Regional Divisions and Offices, which formerly reported to the Regional Director, are now under "straight line" authority, meaning that these units within each Regional Office report to the appropriate Associate Administrator (or Chief Counsel) in charge of the function performed by that unit.

Within part 11 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated rulemaking authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of reorganization.

Title 14 of the Code of Federal Regulations must therefore be amended to reflect the reorganization and changes that have taken place.

Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justification for Immediate Adoption

This amendment is needed to avoid possible confusion about the FAA reorganization and to hasten the effective implementation of the reorganization. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment is unnecessary.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Rule

In consideration of the foregoing the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR Chapter I) effective October 25, 1989.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Special Federal Aviation Regulation 36-6

Development of Major Repair Data

Adopted: January 21, 1994

Effective: January 23, 1994

(Published in 59 FR 3636, January 27, 1994)

SUMMARY: This final rule amends and extends Special Federal Aviation Regulation (SFAR) No. 36, which provides that authorized repair station and aircraft operating certificate holders may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been approved by the Federal Aviation Administration (FAA). Amendments include clarification of the scope of the SFAR authorization. Extension of the regulation continues to provide, for those that qualify, an alternative from the requirement to obtain FAA approval of major repair data on a case-by-case basis, and allows additional time for the FAA to incorporate the SFAR provisions into the regulations.

DATES: Effective January 23, 1994 and terminates January 23, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Continued Airworthiness Staff, Aircraft Engineering Division, AIR-107, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-7218.

SUPPLEMENTARY INFORMATION:

Background

Notice No. 93-15, Special Federal Aviation Regulation No. 36, Development of Major Repair Data, was published in the *Federal Register* on Thursday, October 21, 1993; the comment period closed on November 22, 1993. Ten comments were received and are addressed below in the section entitled Discussion of Comments.

In the NPRM, the FAA proposed amending and extending the termination date of Special Federal Aviation Regulation (SFAR) No. 36, which allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after accomplishing major repairs using data developed by the holder that have not been approved by the FAA.

to perform maintenance on parts or components or articles without authorization to return them to service. These interpretations of eligibility have allowed several SFAR 36 authorizations to be issued and used inconsistently with the original intent of the SFAR.

An aircraft "product" is an aircraft, airframe, aircraft engine, propeller, or appliance. An aircraft "article" is an airframe, powerplant, propeller, instrument, radio, or accessory. Although some repair stations are authorized only to perform maintenance on parts of articles or products, some SFAR 36 authorizations were used by these repair station certificate holders to approve the articles and products for return to service.

The FAA has found that while repair stations that specialize in the repair of parts or components of aircraft articles or products may have the technical capability and scope sufficient for the individual repair, they do not necessarily possess the overall knowledge necessary for returning an article or product to service. Only repair stations and air carriers that understand the form, fit, and function of an aircraft article or product should be authorized to approve that article or product for return to service after a major repair. Furthermore, one must understand the form, fit, and function of the article or product in order to fully evaluate the ramifications of a major repair being developed for that article or product. When the FAA finds that a repair station or air carrier has that necessary understanding, the FAA issues it a certificate and operations specifications commensurate with that finding, and the repair station or air carrier is granted return to service authority. This higher level of certitude by the FAA in the work and knowledge of the repair station or carrier that is authorized to approve the rated article or product for return to service is the basis for the SFAR 36 authorization to develop and use data for major repairs without FAA approval of the data. The preamble to the original SFAR 36 reflected this intent to limit the authorization to these repair stations and carriers when it discussed the need to have damaged aircraft repaired and returned to service as quickly as possible. The SFAR 36 system was never intended to support repairs accomplished further up in the repair stream.

History

Prior to the adoption of SFAR 36, certificate holders that were qualified to make repairs were required to obtain FAA approval on a case-by-case basis for data they had developed to perform major repairs. The only alternative to the time-consuming, case-by-case approval method was to petition for and obtain an exemption granting relief from the regulation. The number of exemptions being granted indicated that revisions to the Federal Aviation Regulations (FAR) were necessary, and SFAR 36 was adopted on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR eliminated the requirement for authorized certificate holders to petition for exemption from the regulation, and allowed the FAA additional time to obtain the information necessary to develop a permanent rule change. Most of the affected certificate holders, however, did not use the provisions of SFAR 36 until it was well into its second year and nearing its expiration date of January 23, 1980. Since the FAA did not yet have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended to January 23, 1982.

Although the FAA has considered consolidating certain authorizations along with those issued under SFAR 36 to make them permanent parts of the regulations, no rulemaking action has been undertaken, and SFAR 36 has been extended three times. Currently, permanent regulatory action is under consideration by the Aviation Rulemaking Advisory Committee (ARAC).

The FAA restates the general provisions of the current SFAR in terms applicable to the individual types of eligible certificate holders. Paragraph (c) of section 2 clarifies that an SFAR 36 authorization does not expand the scope of authority of a repair station certificate holder; i.e., it does not give a repair station return to service authority for any article for which it is not rated or change the articles it is rated to repair.

Section 3

Section 3 states that an authorized certificate holder may approve an aircraft product or article for return to service after accomplishing a major repair, using data not approved by the Administrator, only in accordance with the amended SFAR. Section 3 requires that the data used to perform the major repair be developed and "approved" in accordance with the holder's authorization and procedures manual. Section 3 also enables an authorization holder to use its developed repair data on a subsequent repair of the same type of product or article. For each subsequent repair, the holder must determine that accomplishment of the repair, using previously developed data, will return the product or article to its original or properly altered condition and will conform to all applicable airworthiness requirements. In addition, each subsequent use of the data would have to be recorded in the authorization holder's SFAR records.

Section 4

Section 4 describes the procedures for applying for an SFAR 36 authorization.

Section 5

Section 5 identifies the requirements a certificate holder must meet to be eligible for an SFAR 36 authorization. Paragraphs (a)(2), (a)(3), and (b) define the personnel required and incorporate clarifying changes from the current SFAR. Paragraph (c) contains the reporting requirement of the current SFAR that pertains to changes that could affect the holder's continuing ability to meet the SFAR requirements.

Section 6

Section 6 describes the procedures manual requirements. Paragraph (c) of section 6 requires that an authorization holder that experiences a change in procedures or staff obtain and record FAA approval of the change in order to continue to approve products or articles for return to service.

Section 7

Section 7 states that SFAR 36 terminates on January 23, 1999. All authorizations issued under this SFAR will terminate on that date unless earlier surrendered, suspended, revoked, or otherwise terminated. Section 7 also allows previous authorization holders to either surrender their SFAR 36-developed data to the FAA or to maintain the data indefinitely and make it available to the FAA for inspection.

Section 8

Section 8 prohibits the transfer of an SFAR 36 authorization.

Section 9

Section 9 contains the inspection provisions of the current SFAR. It also emphasizes that the FAA must be able to determine whether an applicant has, or a holder maintains, personnel

Section 11

Section 11 contains the provision that each SFAR 36 authorization holder must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.

Sections 12 and 13

Sections 12 and 13 address data review and service experience requirements and record keeping requirements. Section 12 states the circumstances in which a holder will be required to submit the information necessary for corrective action on a repair. Paragraph (b) of section 13 lists the identification information required rather than use the term "FAA identification," which has been the source of confusion in previous versions of the regulation.

As noted above, the termination date for SFAR 36 is January 23, 1999. The 5-year extension was chosen to allow enough time for the ARAC to deliberate and forward a recommendation, and enough time for the FAA to deliberate and act upon it. On or about the effective date of this final rule, each FAA office having jurisdiction over a current SFAR 36 authorization will reevaluate each holder in terms of the amended rule. All current holders will be notified in writing as to whether they continue to qualify under the amended rule.

The FAA will work with those holders that no longer qualify to establish, where possible, means to perform approved major repairs. The means may include submitting repair data to an aircraft certification office (ACO) for approval, utilizing a consultant designated engineering representative (DER) to approve the data, or employing a company DER.

The extension of SFAR 36 will allow uninterrupted major repair activity by the current authorization holders that qualify under the amended SFAR; those authorizations will be extended without the holders reapplying for authorization. The extension will also allow a new, qualified applicant to obtain an authorization instead of petitioning for exemption from the regulations.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rule-making by submitting written comments to the public regulatory docket on or before November 22, 1993. All comments received have been reviewed and duly considered in promulgating this final rule; comments received after November 22, 1993, have been considered to the extent possible without delaying this rulemaking action. Ten comments were received; two from foreign aviation industry companies, three from domestic aviation industry companies, and five from domestic aviation industry associations. One of the foreign commenters only requests a copy of the NPRM and does not offer substantive comments. Of the remaining nine comments, one opposes the NPRM and four support it. The other four commenters do not declare agreement or opposition to the NPRM, but submit comments and suggestions.

Four commenters state that a repair station that has the authority to return to service a product or article should be able to develop and use major repair data for components or parts of those products and articles and return them to service as well. One of these commenters suggested that the FAA meant to imply that air carriers and repair stations that accomplish major repairs on products or articles are not qualified to accomplish major repairs on parts or components of those products or articles. The FAA agrees that repair stations with the authority to return to service a product or article are qualified and must be able

36 authorization to continue to use the authorization for the term of the extension, or until a permanent rule is in place. One of these commenters read the NPRM to mean that repair stations currently conducting work under SFAR 36 must discontinue such work. The FAA disagrees; the rule does not require that work be discontinued, but rather that the repair station performing the work be truly qualified before returning an article to service. As was stated in the NPRM, some SFAR 36 authorizations were issued in error, due to misinterpretation of the rule. The FAA has determined that the error must not continue and those authorizations issued in error can not be extended without the authorization holders meeting all qualifications. The rule language proposed in the NPRM is retained to clarify the qualifications.

One commenter is concerned that its current authorization may lapse on the termination date of January 23, 1994. To ensure a smooth transition, current SFAR 36 authorization holders will be permitted to use their authorizations until the FAA notifies them that they do not continue to qualify to hold the authorization.

One commenter proposes that the rule include a system of positive identification on the restored product with traceability directly back to the facility performing the major repair and to the specific data package authorizing the major repair. The FAA agrees that this issue has merit; however, such a requirement would add a substantial burden not proposed in the NPRM. The suggestion is beyond the scope of this rulemaking. Future documents such as Advisory Circulars, FAA Orders, or other rulemaking projects, including those developed in the ARAC, may consider this suggestion, if applicable.

One commenter suggests allowing foreign repair stations to use SFAR 36 authorizations to develop and use major repair data. The FAA disagrees; SFAR 36 has never been available to foreign repair stations. The resources and database systems currently available to oversee foreign operations are not sufficient to adequately monitor such SFAR 36 authorizations. The rule will not be expanded to include foreign repair stations.

One commenter suggests that the current SFAR 36 does not need clarification, but rather §§ 145.51(b) and 145.53 of the Federal Aviation Regulations, which address return to service authority and maintenance of rated items, need to be enforced. The FAA disagrees; the erroneous issuance of SFAR 36 authorizations demonstrates that ambiguity exists in the current rule. The rule sections cited by the commenter are not at issue in improper SFAR 36 authorizations. Increased enforcement of other regulations would not change the ambiguity that exists in SFAR 36.

One commenter suggests that the three subsections of section 2 of the rule be condensed into one paragraph, along with other minor revisions. The FAA realizes that some of the material in these subsections is repeated, but the subsections do refer to different sections of the regulations. Part of the confusion with the current SFAR stems from the very combinations of information suggested by the commenter. Section 2 was divided into three sections in order to clarify what is available to different applicants.

One commenter suggests that section 6 of the NPRM be amended to add that the Administrator must approve within 15 days a change in repair station staff necessary to meet other requirements of the regulation or a change in procedures approved under a separate paragraph of the regulation. The FAA disagrees; often, more than 15 days is needed to conduct research necessary to verify a new staff member's background and ability or to evaluate procedures. The FAA can not grant approval to necessary staff personnel or procedures without thoroughly investigating all issues involved to ensure that the level of safety intended by the rule continues to be met. No time limit for FAA approval will be added to section 6.

this change.

One commenter proposes that the words “article” and “product” should both appear wherever one is currently used to encompass all items intended. The FAA agrees in part, and has further determined that the final rule should reflect one term where one most clearly states the applicability of the corresponding provision. For example, FAR Section 121.379(b) states that a certificate holder may approve for return to service a *product* after maintenance, etc., performed under paragraph (a) of Section 121.379. FAR Section 145.51b states that a repair station certificate holder may approve for return to service any *article* for which it is rated. Accordingly, the final rule has been revised to use “product” when referring to repairs performed by air carrier and air taxi certificate holders, and to use “article” when referring to repairs performed by repair station certificate holders; the final rule uses both terms where it does not distinguish between the certificate holders.

One commenter suggests that clarification is needed as to whether a repair station may continue to utilize major repair data developed previously under its SFAR 36 authorization if that authorization ceases, terminates, or expires. The FAA agrees that a clarification is needed. A holder whose authorization has expired or has been terminated may not use data previously developed under its authorization to perform a major repair and return the product or article to service; the relevant provisions of FAR parts 121, 127, and 145 cited in Section 2 of the proposed and final rule prohibit that return to service.

In addition, Section 7 of the final rule requires the holder to surrender its SFAR 36-developed data to the FAA. However, the FAA acknowledges that a holder whose authorization has expired or been terminated may have a legitimate future use for the data; e.g., the holder may apply to the FAA to have the data approved. Accordingly, to accommodate the FAA’s continued airworthiness concerns and a holder’s interest in data it has developed, section 7 of the final rule has been revised to allow a former authorization holder to surrender its SFAR 36-developed data, or maintain its data indefinitely and make the data available to the FAA for inspection.

Paperwork Reduction Act

Information collection requirements in SFAR 36–6 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned the OMB Control Number 2120–0507. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on the amendments to 14 CFR parts 121, 127, 135, and 145—Special Federal Aviation Regulation No. 36, Development of Major Repair Data. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, State, and local governments.

The FAA has determined that this rulemaking is not a “significant regulatory action” as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation in the docket for this final rule).

to operate under SFAR 36, and will avoid economic hardship to those relying on it as it presently exists. The final rule will also eliminate ambiguities that exist in the present rule. These ambiguities have allowed component repair stations that do not have return to service authorization to receive SFAR 36 authorizations. Repair stations that specialize in component or piece parts of products (instead of aircraft engines or air frames, for example) and are not returning those products to service, do not necessarily possess the overall knowledge necessary for returning an article or product to service. Only repair stations and air carriers that understand the form, fit, and function of an aircraft article or product should be authorized to approve that article or product for return to service after a major repair.

There have been no known documented instances where aviation safety has been compromised as a result of these repaired products being returned. Nevertheless, the level of certitude should not be compromised, and only those that understand the form, fit, and function of the product should be permitted to return the product to service.

The benefits of this action are the potential improvements in aviation safety.

Comparison of Costs and Benefits

The costs associated with this final rule (\$55 to industry and \$840 to the FAA) are minimal. In view of the negligible costs of the rule, coupled with benefits in the form of enhanced safety to all aircraft operators, the FAA has determined that the rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this final rule are below any threshold established by FAA Order 2100.14A. Therefore, the final rule will not have a significant economic impact on any small entity.

International Trade Impact Assessment

This final rule will have neither an effect on the sale of foreign aviation products or services in the United States, nor an effect on the sale of U.S. products or services in foreign countries since it does not impose costs on aircraft operators or U.S. or foreign aircraft manufacturers.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, nor the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Justification for Immediate Adoption

The FAA has determined that delay in the adoption of this rule would cause undue burden to qualified domestic repair stations, air carriers, air taxi operators with large aircraft, and commercial operators of large aircraft. These companies use their SFAR 36 authorizations to

I certify that this final rule: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant rule under DOT Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 CFR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this final rule has little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121, 127, 135, and 145 effective January 23, 1994.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430, 49 U.S.C. 106(g).

(c) A component is a part of a product or article.

2. General.

(a) Contrary provisions of § 121.379(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate that operates large aircraft, that has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121, may perform a major repair on a product, as described in § 121.379(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(b) Contrary provisions of § 127.40(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating certificate that has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 127 may perform a major repair on a product as described in § 127.140(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(c) Contrary provisions of § 145.51 of the Federal Aviation Regulations notwithstanding, the holder of a domestic repair station certificate under 14 CFR part 145 may perform a major repair on an article for which it is rated, using technical data not approved by the Administrator, and approve that article for return to service, if authorized in accordance with this Special Federal Aviation Regulation. If the certificate holder holds a rating limited to a component of a product or article, the holder may not, by virtue of this Special Federal Aviation Regulation, approve that product or article for return to service.

3. Major repair data and return to service.

(a) As referenced in section 2 of this Special Federal Aviation Regulation, a certificate holder may perform a major repair on a product or article using technical data that have not been approved by the Administrator, and approve that product or article for return to service, if the certificate holder—

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36, effective on January 23, 1994;

(2) Has developed the technical data in accordance with the procedures manual;

(3) Has developed the technical data specifically for the product or article being repaired; and

(4) Has accomplished the repair in accordance with the procedures manual and the procedures approved by the Administrator for the certificate.

(b) For purposes of this section, an authorization holder may develop technical data to perform a major repair on a product or article and use that data to repair a subsequent product or article of the same type as long as the holder—

(1) Evaluates each subsequent repair and the technical data to determine that performing the subsequent repair with the same data will return the product or article to its original or properly altered condition, and that the repaired product or article conforms with applicable airworthiness requirements; and

(2) Records each evaluation in the records referenced in paragraph (a) of section 13 of this Special Federal Aviation Regulation.】

- (i) The applicant's certificate number; and
 - (ii) The specific product(s) the applicant is authorized to maintain under its certificate, operations specifications, and maintenance manual; or
- (2) The holder of a domestic repair station certificate—
- (i) The applicant's certificate number;
 - (ii) A copy of the applicant's operations specifications; and
 - (iii) The specific article(s) for which the applicant is rated;
- (b) The name, signature, and title of each person for whom authorization to approve, on behalf of the authorization holder, the use of technical data for major repairs is requested; and
- (c) The qualifications of the applicant's staff that show compliance with section 5 of this Special Federal Aviation Regulation.

5. Eligibility.

(a) To be eligible for an authorization under this Special Federal Aviation Regulation, the applicant, in addition to having the authority to repair products or articles must—

(1) Hold an air carrier, commercial, or air taxi operating certificate, and have been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121 or 127, or § 135.2, or hold a domestic repair station certificate under 14 CFR part 145;

(2) Have an adequate number of sufficiently trained personnel in the United States to develop data and repair the products that the applicant is authorized to maintain under its operating certificate or the articles for which it is rated under its domestic repair station certificate;

(3) Employ, or have available, a staff of engineering personnel that can determine compliance with the applicable airworthiness requirements of the Federal Aviation Regulations.

(b) At least one member of the staff required by paragraph (a)(3) of this section must—

(1) Have a thorough working knowledge of the applicable requirements of the Federal Aviation Regulations;

(2) Occupy a position on the applicant's staff that has the authority to establish a repair program that ensures that each repaired product or article meets the applicable requirements of the Federal Aviation Regulations;

(3) Have at least one year of satisfactory experience in processing engineering work, in direct contact with the FAA, for type certification or major repair projects; and

(4) Have at least eight years of aeronautical engineering experience (which may include the one year of experience in processing engineering work for type certification or major repair projects).

(c) The holder of an authorization issued under this Special Federal Aviation Regulation shall notify the Administrator within 48 hours of any change (including a change of personnel) that could affect the ability of the holder to meet the requirements of this Special Federal Aviation Regulation.】

(1) The procedures for developing and determining the adequacy of technical data for major repairs;

(2) The identification (names, signatures, and responsibilities) of officials and of each staff member described in section 5 of this Special Federal Aviation Regulation who—

(i) Has the authority to make changes in procedures that require a revision to the procedures manual; and

(ii) Prepares or determines the adequacy of technical data, plans or conducts tests, and approves, on behalf of the authorization holder, test results; and

(3) A “log of revisions” page that identifies each revised item, page, and date of revision, and contains the signature of the person approving the change for the Administrator.

(c) The holder of an authorization issued under this Special Federal Aviation Regulation may not approve a product or article for return to service after a change in staff necessary to meet the requirements of section 5 of this regulation or a change in procedures from those approved under paragraph (a) of this section, unless that change has been approved by the FAA and entered in the procedures manual.

7. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 1999, unless it is earlier surrendered, suspended, revoked, or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

(a) Surrender to the FAA all data developed pursuant to Special Federal Aviation Regulation No. 36; or

(b) Maintain indefinitely all data developed pursuant to Special Federal Aviation Regulation No. 36, and make that data available to the FAA for inspection upon request.

8. *Transferability.* An authorization issued under this special Federal Aviation Regulation is not transferable.

9. *Inspections.* Each holder of an authorization issued under this Special Federal Aviation Regulation and each applicant for an authorization must allow the Administrator to inspect its personnel, facilities, products and articles, and records upon request.

10. *Limits of Applicability.* An authorization issued under this Special Federal Aviation Regulation applies only to—

(a) A product that the air carrier, commercial, or air taxi operating certificate holder is authorized to maintain pursuant to its continuous airworthiness maintenance program or maintenance manual; or

(b) An article for which the domestic repair station certificate holder is rated. If the certificate holder is rated for a component of an article, the holder may not, in accordance with this Special Federal Aviation Regulation, approve that article for return to service.

11. *Additional Authorization Limitations.* Each holder of an authorization issued under this Special Federal Aviation Regulation must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.】

(b) Report to the Administrator the results of the investigation and any action proposed or taken; and

(c) If notified that an unsafe condition exists, provide within the time period stated by the Administrator, the information necessary for the FAA to issue an airworthiness directive under part 39 of the Federal Aviation Regulations.

13. *Current Records.* Each holder of an authorization issued under this Special Federal Aviation Regulation shall maintain, at its facility, current records containing—

(a) For each product or article for which it has developed and used major repair data, a technical data file that includes all data and amendments thereto (including drawings, photographs, specifications, instructions, and reports) necessary to accomplish the major repair;

(b) A list of products or articles by make, model, manufacturer's serial number (including specific part numbers and serial numbers of components) and, if applicable, FAA Technical Standard Order (TSO) or Parts Manufacturer Approval (PMA) identification, that have been repaired under the authorization; and

(c) A file of information from all available sources on difficulties experienced with products and articles repaired under the authorization.

This Special Federal Aviation Regulation terminates January 23, 1999.】

【(SFAR 36-6, Eff. 1/23/94)】

SUMMARY: In response to the Airline Deregulation Act of 1978 (P.L. 95-504) and recent actions by the Civil Aeronautics Board, this Special Federal Aviation Regulation (SFAR) simplifies the certificate issuance procedures for air carriers and other operators engaged in air commerce. The FAA is hereby providing for the issuance of (1) an FAA air carrier operating certificate to each air carrier, as defined in the Federal Aviation Act of 1958, as amended, which will cover all operations that operator conducts under parts 121, 127, and 135 of the Federal Aviation Regulations (FARs), and (2) an FAA operating certificate to any operator who is not air carrier which will cover all non-air carrier operations conducted by that operator under parts 121, 123, and 135 of the FARs. Under this SFAR, only one operating certificate will be issued to an air carrier. Each type of operation an air carrier is authorized to conduct and the regulations applicable to each type operation will be specified in the air carrier's operations specifications. The impact of this SFAR is to eliminate both an immediate and future unnecessary burden on attached aircraft operations.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond E. Ramakis, Regulatory Projects Branch, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Regulations were designed for the issuance of one FAA operating certificate to each air carrier based on the type of operations it conducted. This regulatory plan was consistent with the economic regulations of the Civil Aeronautics Board and has worked well in the past with respect to air carrier operations conducted under certificates of public convenience and necessity or other appropriate economic authority issued by the CAB. However, the initiation by the CAB of a liberalization of its policy and regulations concerning the grant of economic authority and route authorizations together with the congressional establishment of all-cargo air services authority and the implementation of the Airline Deregulation Act of 1978 has resulted in the issuance of multiple CAB certificates, exemptions and authority authorizations with individual air carriers being granted CAB authority to conduct a variety of operations. In some cases, operators have received authority to conduct operations both as an air taxi and as an all-cargo air carrier. In other cases, domestic and flag air carriers have been granted authority to also engage in all-cargo air service operations and/or air taxi operations and some supplemental air carriers have received authority to provide scheduled domestic and/or flag service.

An operator who receives CAB authority to perform a new type of service must also apply for an FAA operating certificate and/or operations specifications. Since different parts of the FARs are applicable to the different types of operations and each part contains its own certification and operating rules, the issuance of multiple FAA certificates has led to duplication of requirements, unnecessary paperwork, and confusion. Moreover, the authorization of the additional authority may require the grant of exemptions from mutually exclusive requirements of the different parts. Pending a detailed review and amendment of the Federal Aviation Regulations, the FAA is adopting the Special Federal Aviation Regulation to simplify the certificate issuance procedures and eliminate the undue administrative burden the current procedural requirements place on affected operators and FAA field offices.

applicable only to air travel clubs. The holder of an "Operating Certificate" will be limited to either those operations specified in the current regulations noted below for commercial operations or those specified for an air travel club.

Air Carrier Operating Certificate:

Domestic Air Carrier Operations	Part 121
Flag Air Carrier Operations	Part 121
Supplemental Air Carrier Operations	Part 121
All-Cargo Air Service Operations	Part 121
Scheduled Helicopter Operations	Part 127
Air Taxi Operations—Small and Certain Large Aircraft	Part 135

Operating Certificate:

Commercial Operations—Large Aircraft	Part 121
Commercial Operations—Small and Certain Large Aircraft	Part 135
Air Travel Club Operations Using Large Airplanes	Part 123

Although the certificate is no longer identified with a particular type of operation (e.g. domestic air carrier, air taxi operator, etc.) or with a specific part of the Federal Aviation Regulations (e.g. part 121 certificate holder, part 135 certificate holder, etc.), the types of operations authorized will be identified in the operations specifications; and, the regulations applicable to each type of operation will be specified from the currently applicable regulations.

The operations specifications will be issued based on the type of aircraft the operator intends to use in the conduct of its operations. For example, an air carrier operating aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less, and a maximum payload capacity of 7,500 pounds or less will be issued operations specification under the provisions of revised part 135, effective December 1, 1978, (43 FR 46742, October 10, 1978) applicable to commuter and air taxi operations. However, in accordance with the grandfather provisions of § 135.2(d), the holder of a current air taxi operator's certificate who, on December 1, 1978, conducted its operations in those aircraft under the rules of part 121 applicable to domestic or supplemental air carriers may elect to continue to operate those aircraft under operations specifications issued under the provisions of part 121. Air carriers operating larger aircraft will be issued operations specifications under the provisions of part 121. It should be noted that, depending on the type of aircraft used, an air carrier's operations specifications may include those issued under parts 121, 127, and 135. This is consistent with the current pass-through provisions of §§ 121.9 and 135.2. Section 121.9 requires the holder of a "part 121" certificate who conducts any operations in small and certain large airplanes to conduct those operations under the requirements of part 135 applicable to air taxi operators. Likewise, § 135.2 requires the holder of a "part 135" air taxi certificate who conducts any operations in certain large airplanes to conduct those operations under the applicable requirements of part 121.

No change in the substantive requirements applicable to the aircraft listed in the operation specifications of operators who currently hold certificates is made by this SFAR. All certificate holders will continue to comply with the provisions and limitations under which they are

certificates or operations specifications. In any event, all operators will be issued the new certificates by June 30, 1980. In this connection it should also be noted that a certificate number presently held by an operator may be transferred to the new certificate if the operator wants to retain the number.

Need for Immediate Action

In order that air carriers issued authority by the CAB pursuant to certain provisions of the Airline Deregulation Act of 1978 may commence service pursuant to such authority within the time required by that Act, and since this special SFAR is administrative in nature and relieves an unnecessary burden on the FAA and applicants for operating certificates and changes to those certificates, I find that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days. However, the FAA intends to review the certification procedure experience under this SFAR and interested persons are invited to participate in this process by submitting such written data, views, arguments as they may desire regarding this SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, DC 20591. All communications received on or before January 31, 1979, will be considered by the Administrator and this SFAR may be changed in the light of the comments received. All comments submitted will be available, both before and after, 500 closing date for comments, in the Rules Docket for examination by interested persons.

The Amendment

Accordingly, Special Federal Aviation Regulation No. 38 is adopted, effective December 14, 1978.

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. Sections 1354(a), 1421 and 1424); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. Section 1655(c)).)

NOTE: The FAA has determined that this document is not significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Special Federal Aviation Regulation 38-1

Certificate Requirements: General

Adopted: December 27, 1984

Effective: January 1, 1985

(Published in 50 FR 450, January 4, 1985)

SUMMARY: This amendment extends the effectiveness of Special Federal Aviation (SFAR) No. 38. In 1978, the FAA promulgated SFAR 38 as an interim regulation to address regulatory questions arising from legislation that resulted in economic deregulation of the air transportation industry and from the Civil Aeronautics Board's (CAB) scheduled demise (or "sunset") on December 31, 1984. Having generally reviewed the FAA regulations to determine the most appropriate regulatory response to the Airline Deregulation Act of 1978 and the termination

ence Avenue, SW., Washington, DC 20591, deliver comments in duplicate to: FAA Rules Docket, Room 915G, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Catey, Project Development Branch, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone (202) 427-4621.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA promulgated SFAR 38 in consequence of the Airline Deregulation Act of 1978 (Pub. L. 95-304, 33 U.S.C. 857-14). That Act embodies the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished, and in anticipating its sunset, the CAB curtailed or suspended much of its regulatory activity. On October 4, 1984, additional legislation was enacted further defining the process for CAB sunset.

Because some aspects of FAA safety regulation rest upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority, to a regulatory regime with no CAB in existence. SFAR 38 set out FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire" (SFAR 38 does not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, Part 91 Training and Other Special Purpose Operations.) The FAA has reviewed SFAR 38 and has concluded that it should be revised and clarified and that its effectiveness should be continued until at least May 1, 1986, to give the FAA time to review all of its regulations in a post-CAB sunset light. A proposed revision of SFAR 38 will soon be published for public comment in the *Federal Register*. This amendment merely extends the termination date of SFAR 38 to June 1, 1985, to allow adequate time for receipt and consideration of public comment on the proposed revisions to present SFAR 38 which are being undertaken in separate rulemaking.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 38, and for the operating certificates issued under SFAR 38, is January 1, 1985. The reasons which justified the adoption of SFAR 38 still exist. Therefore, it is in the public interest to extend the termination date of SFAR 38 from January 1, 1985, to June 1, 1985. This action is necessary to permit continued operations under operating certificates issued under SFAR 38 and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

In addition, since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures hereon are unnecessary, impracticable, and contrary to the public interest, and that the amendment may be made effective in less than 30 days. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify

Regulatory Flexibility Determination

The FAA finds that the amendment will have no significant economic impact on small entities.

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing, parts 121, 127 and 135 of the Federal Aviation Regulations are amended effective January 1, 1985.

By amending Special Federal Aviation Regulation No. 38 in 14 CFR parts 121, 127, and 135, to change the termination date from "January 1, 1985," to "June 1, 1985."

(Secs. 313, 601, 603 and 1102, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354, 1421, 1423, 1424, and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)).

Special Federal Aviation Regulation 38-2

Certification and Operating Requirements

Adopted: May 28, 1985

Effective: June 4, 1985

(Published in 50 FR 23941, June 7, 1985)

SUMMARY: These amendments: (1) Specify and clarify the type of certificate and operations specifications an operator may be issued consistent with the scope and type of its operations; (2) specify and clarify the certification requirements the operator must meet with respect to each type of operation in order to be eligible to have a specified type of operation authorized in its operations specifications; (3) clarify the regulations with which an operator must comply in the conduct of the operations specified; (4) include provisions regarding part 125 and other regulations which have been promulgated since the adoption of Special Federal Aviation Regulation (SFAR) No. 38 and eliminate provisions that relate to part 123 and other regulations that are no longer applicable; (5) authorize certain operators of transport category airplanes having a maximum passenger seating configuration, excluding any required crewmember seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less to operate under the provisions of part 121 rather than part 135 when a specific authorization is obtained from the Administrator (the related "pass-through" provision of SFAR 38 is deleted); (6) require rotorcraft operations that may currently be subject to parts 121 and 127 to be conducted under part 135; and (7) include the substance of present part 129 applicability in order to provide a comprehensive listing of certification and operations specifications requirements.

3 (50 FR 4472). This Notice proposed to revise SFAR 38 primarily to specify and clarify FAA requirements for operating certificates and for operations specifications for persons who operate under Federal Aviation Regulations parts 121 and 135. The Notice was issued to bring SFAR 38 up to date in view of changes in the regulations and in the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's continuing response to the sunset of the Civil Aeronautics Board.

This amendment updates SFAR 38 in light of changes since 1978 and clarifies those provisions in SFAR 38 that state which FAA regulations apply to a particular air carrier for the type of operation the air carrier is conducting in the areas summarized below. A fuller discussion of each area is contained in the preamble to NPRM 85-3.

One of the purposes of this amendment is to clearly define, for each type of operation (e.g., scheduled common carriage within the United States, all-cargo operations, scheduled common carriage outside the United States, etc.): (1) The type of certificate, (2) the certification requirements, (3) the operations specifications, and (4) the regulations within the applicable parts of the FAR with which an operator must comply when conducting each type of operation.

As amended, SFAR 38-2 makes it clear that wherever the term "commuter air carrier" appears in part 135 of the FAR, it shall be deemed to mean a holder of an "Air Carrier Operating Certificate" that is conducting scheduled passenger carrying operations with a frequency of operations of at least five round trips per week on at least one route between two or more points according to published flight schedules. This frequency of operations is a standard currently accepted by the industry and the FAA for air carrier certification and operation rules. However, this definition would not apply to part 93 of the FAR. Further, a regulation that applies to a commuter air carrier will be deemed to mean a regulation that applies to scheduled passenger-carrying operations conducted under part 135.

SFAR 38-2 allows the Administrator to authorize an air carrier who would otherwise be subject to part 135 to elect to conduct its operations with transport category airplanes under part 121. However, an air carrier is not allowed to operate airplanes subject to part 121 under part 135.

SFAR 38-2 does not reference § 135.2, and any air carrier conducting its operations under the "pass-through" provision is required to conduct its operations under part 135, unless it receives authorization from the Administrator to conduct its operation under part 121.

SFAR 38 is updated by adding provisions which reference part 125 which became effective February 3, 1981, and deletes the provisions relating to part 123 which was revoked effective January 1, 1983.

SFAR 38-2 requires rotorcraft operations that are now conducted under part 121 or part 127 to be conducted under part 135. The amendment, in effect, suspends part 127 and §§ 121.13 and 121.157(e), and requires all rotorcraft operations to be conducted under part 135.

As amended, SFAR 38-2 includes the substance of the applicability of present part 129 in order to provide for a comprehensive listing of certification and operations specifications requirements.

SFAR 38 as revised by this amendment will be effective until May 1, 1986, unless sooner superseded or revoked.

original SFAR 38 and it does not appear to have caused the kind of confusion the commenter suggests.

Four commenters request that the phrase "passenger seating capacity" in proposed paragraphs 4(a) and 4(b) be changed to "passenger seating configuration" as it is in current SFAR 38 paragraphs 2(a) and (b) and 3(a) and (b). The reason is that the proposed wording would mean that if an aircraft has been certificated for a certain maximum seating capacity, that figure would be the compliance factor, rather than the number of installed passenger seats in the aircraft. The FAA did not intend to change the criteria for compliance and has, therefore, changed the language back to "passenger seating configuration" as it appears in the provisions of present SFAR 38 cited above.

For consistency of language within SFAR 38-2 and also for consistency of application of the FAR, the term "passenger seating capacity" in paragraph 5(a), which relates to part 125 has also been changed to "passenger seating configuration" even though part 125 (section 125.1(a)) presently uses "seating capacity." The FAA does not consider this a substantive change since part 125 has been applied on the basis of seating "configuration" rather than seating "capacity."

One commenter objected to the phrase "certain procedures" used in Section 3 as being unclear. The commenter suggested changing "certain procedures" to "appropriate regulations." The FAA does not agree. The term "certain procedures" refers to procedures that may be included in operations specifications to reflect requirements imposed on a specific operator in addition to the Federal Aviation Regulations. Examples would include specific procedures that might be tied in with a deviation or an exemption approved for that carrier. The commenter also objected to the phrase "size of aircraft" in Section 3 as not being sufficiently specific. The commenter suggested changing "size of aircraft" to "seating and payload capacity." The commenter's point is valid and has been adopted by inclusion of a definition of "size of aircraft" in Section 6(c). Also, in Section 1(a) and in Section 3, the word "type" in reference to type of aircraft, has been changed to "class" to make it clear that the distinction intended is not between types of aircraft (e.g., B-727, DC-8, etc.) but rather between classes of aircraft (e.g., airplane, rotorcraft, etc.).

One commenter suggests that the preamble statements regarding CAB sunset be updated to show that a finding of fitness is a continuing requirement under the sunset legislation and that the Department of Transportation now has this function formerly handled by the CAB. The FAA agrees. The NPRM preamble was written before the 1984 amendments to the Airline Deregulation Act of 1978, (Pub. L. 98-443, October 4, 1984) which stipulated that DOT will continue the CAB function of determining fitness.

One commenter objects to the explanation in the preamble concerning confusion as to applicable regulations resulting from the sunset of the CAB. This commenter states that an FAA policy change, rather than confusion, was responsible for the FAA's requiring 21 carriers to shift from the supplemental rules of part 121 to the domestic or flag rules of part 121, as appropriate. This point was addressed in the preamble to the proposed revision of SFAR 38 as follows:

"It is the FAA's position that an air carrier certificated under current SFAR 38 in accordance with the rules of part 121 must, if it is engaged in scheduled passenger operations, operate in accordance with the rules applicable to domestic or flag air carriers as required by § 121.3(a) or § 121.3(c) and be issued domestic and flag operations specifications. Furthermore, it is the

This commenter also thought that elimination of the "pass-through" provision in paragraph 2(d) of SFAR 38 would impose a similar burden. However, the inclusion of paragraph 4(b) as proposed allows persons operating transport category airplanes to obtain approval from the Administrator to conduct those operations under the appropriate provisions of part 121. This provision is less limited than the original passthrough provision (which applied only to operations existing on December 1, 1978) and applies only when requested by the operator and approved by the Administrator.

Two commenters object to the definition of "commuter air carriers." One of the commenters seems to object to applying the term "commuter" to air carriers who are operating under part 121 domestic rules, but who are operating propeller driven aircraft of less than 60 seats. Such operators consider themselves to be "regional" air carriers who compete equally with other types of air carriers. However, the definition of commuter air carriers does not apply to operations under part 121 because it applies only to operations under part 135 with aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

A second commenter objects to provisions in the definition of "commuter air carriers" that state that frequency of operations is "at least five round trips per week on at least one route between two or more points...." The commenter objects on the basis that the definition constitutes a public convenience and necessity requirement and that the authority domestically to issue a Certificate of Public Convenience and Necessity for domestic operations was terminated by Congress on January 1, 1982. In response, the FAA does not intend by this definition to create a public convenience and necessity requirement in the "commuter air carrier" definition. The definition has been used historically in part 135 to refer to scheduled operations as opposed to non-scheduled. To preclude a change in the operations requirements prescribed in SFAR 38, the commuter air carrier route and frequency stipulation is needed in the SFAR 38-2 definition in order to continue to exclude those operators who may fly fewer than five round trips per week from certain commuter air carrier requirements prescribed in part 135.

A commenter objected to the definition of "scheduled operations." According to the commenter, the definition would require charter operators to be issued domestic air carrier operations specifications if they were to contract for a series of public charters. The FAA does not agree that this definition includes legitimate charter operations. Scheduled operations by definition depart at a stated time and place and are readily available to the general public. While, on occasion, "charter" flights are "announced" in advance, the charter operator normally does not commit to having the flight operate unless a minimum load of passengers is hooked in advance. Thus, the general public cannot depend upon a chartered flight maintaining a schedule (for example, there may be a last minute flight cancellation because not enough passengers signed up for the flight) as they can on a scheduled flight. An operator who attempts to hold itself out as a charter operator but who, in fact, announces regularly scheduled flights to the public would be considered a scheduled operator and would have to comply with the regulations for scheduled operations under part 121 or part 135, as appropriate.

Two commenters expressed concern that the definition of "air carriers" in Section 6(c)(1) would require all indirect "air carriers" to have operating certificates and operations specifications under Section 1(c) which states that "no person may operate without, or in violation of, a certificate and operations specifications issued under this SFAR."

While it is true, as these commenters point out, that the Federal Aviation Act of 1958 defines "air carrier" to include one who acts "indirectly," the FAA has never extended its

payload capacity of more than 7,500 pounds. The commenter states that in their responses to other rulemaking proposals concerning rotorcraft, such as Notice No. 85-8 (50 FR 10144, March 13, 1985), industry groups must now consider future operations of larger helicopters under part 135. In response, the FAA notes that the proposal to require all sizes of rotorcraft to be operated under part 135 is based on the recognition that there are significant deficiencies in parts 121 and 127 that must be addressed before authorizing any rotorcraft operations under those rules. The issuance of special operations specifications is identified in the preamble of the proposal as an option to permit the operation of larger rotorcraft under part 135. In the meantime, Exemptions Nos. 4109 and 4297 have been issued to two operators to permit the operation of BV-234 helicopters under part 135. The FAA recognizes that additional rulemaking is needed to adequately cover the operation of rotorcraft having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds. In the interim, since part 135 does not presently address that size rotorcraft, operators of these rotorcraft will be issued special operations specifications which will provide for the appropriate level of safety required for that size aircraft. New paragraphs 4(d) and 5(d) are added to this SFAR to clarify this point, and to spell out what was intended in the NPRM.

Three commenters suggest changes which are beyond the scope of this Notice of Proposed Rulemaking. As stated earlier in this notice and in the NPRM, this rulemaking updates and clarifies SFAR-38; it does not substantively revise the basic applicability of the affected parts. Therefore, these recommendations for substantive change beyond the scope of Notice 85-3 have not been considered in this rulemaking.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 38 as extended by SFAR 38-1, is June 1, 1985. There are numerous operating certificates issued under the provisions of SFAR 38, as amended. In order to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements, it is necessary that this amendment be effective as soon as possible. Therefore, I find that good cause exists for making this amendment effective in less than 30 days.

Economic Impact

The FAA evaluated the economic impact of this amendment. This amendment is not expected to cause an adverse economic impact on the regulated parties because it is essentially clarifying in nature. The findings of FAA's evaluation are summarized below and a copy of the regulatory evaluation is contained in the docket.

The rule (1) Specifies and clarifies certification requirements and regulations operators must comply with in conducting specific operations, (2) includes regulations that have been promulgated and deletes references to regulations that have been withdrawn since the adoption of SFAR 38, and (3) suspends regulations that are no longer applicable.

As previously pointed out, it is the FAA's position that the current regulations require scheduled operations in airplanes with more than 30 passenger seats to be conducted under the domestic or flag air carrier rules. Therefore, as the result of this rule, there should be minimal economic impact on the approximately 21 carriers previously discussed. Accordingly, a full economic evaluation is not required. Notwithstanding the above position, an evaluation was performed. This evaluation reveals that a small net benefit will accrue to the affected carriers because costs that may result from having to comply with the domestic and flag

be subject to the provisions of part 121 or 127. Moreover, commuter operations with large rotorcraft currently do not appear feasible at locations where the geographical distribution of service points make rotorcraft operations viable.

Trade Impact Statement

The FAA finds that the amendment will have no impact on international trade.

Regulatory Flexibility Determination

The FAA finds that the amendment will have no consequential economic impact on small entities. Accordingly, the FAA finds that an initial regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Conclusion

For the reasons stated under the heading "Economic Impact," the FAA has determined that this document involves a rule which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Also, for the reasons stated under the heading "Trade Impact Statement and Regulatory Flexibility Determination," I certify that the rule will not have a substantial economic impact on a substantial number of small entities. The total projected impact of the amendment may be found in a copy of the regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

The Amendment

In consideration of the above, SFAR 38 (14 CFR parts 121, 125, 127, 129, and 135 is revised effective June 4, 1985.

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Special Federal Aviation Regulation 38-3

Certification and Operating Requirements

Adopted: April 30, 1986

Effective: May 8, 1986

(Published in 51 FR 17274, May 8, 1986)

SUMMARY: These amendments extend the effectiveness of Special Federal Aviation Regulations (SFAR) No. 38-2 (50 FR 23941; June 7, 1985). SFAR revised SFAR 38 primarily by specifying and clarifying FAA requirements for operating certificates and operations specifications for persons who operate under Federal Aviation Regulations (FAR) parts 121 and 135. The amendment brought SFAR 38 up to date in view of changes in the regulations and the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's response to the sunset of the Civil Aeronautics Board (CAB). Having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 (ADA) and the termination of CAB functions attendant on the CAB sunset, the FAA now concludes

Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8096.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA promulgated SFAR 38 in consequence of the ADA (Pub. L. 95-504, 92 Stat. 1705). That Act embodies the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984. Anticipating its sunset, the CAB curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, those remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulation relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation which existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire" (SFAR 38 did not address part 133 External Load Operations, part 137 Agriculture Aircraft Operations, or part 91 training and other special purpose operations.)

On December 27, 1984, the FAA adopted SFAR 38-2 which merely extended the termination date of the regulation, and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA adopted SFAR 38-2, which updated SFAR 38 in light of changes since 1978 and clarified provisions that state which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were fairly rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized

part of the FAR. This NPRM will also propose incorporating the necessary portions of SFAR 38-2 into the FAR. Therefore, it is in the public interest to extend the termination date of SFAR 38-2 from May 1, 1986 to June 1, 1987, although the FAA anticipates that a final rule incorporating SFAR 38-2 in the FAR will be published before then. If it is, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under operating certificates issued under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

In addition, since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Conclusion

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing, SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is effective May 8, 1986.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2 (50 FR 23941; June 7, 1985) and establishes a new termination date. The SFAR 38-2 was previously amended by SFAR 38-3 (51 FR 17274; May 9, 1986) to extend its termination date to allow time for the FAA, in a separate rulemaking action, to prepare a Notice of Proposed Rulemaking (NPRM) that would consolidate the certification rules now in parts 121 and 135 into a new part of the FAR. This NPRM would also propose incorporating the necessary portions of SFAR 38-2 into the FAR. Having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 (ADA) and the termination of CAB functions following the CAB sunset, the FAA now concludes that it is necessary to renew the effectiveness of SFAR 38-2 and to establish a new termination date to allow time for the FAA to complete the rulemaking process that will consolidate the certification rules and incorporate SFAR 38-2 into the FAR. The termination date for reinstated SFAR 38-2 is June 1, 1989. The FAA intends to publish a notice rescinding SFAR 38-2 and a final rule incorporating SFAR 38-2 into the FAR concurrently in the *Federal Register*.

Comments must be received on or before October 5, 1987.

ADDRESSES: Send comments on the rule in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rule Docket (AGC-204), Docket No. 18518, 800 Independence Avenue SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rule Docket, Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3750.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA promulgated SFAR 38 (43 TR 58366; December 14, 1978) in consequence of the ADA (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that various of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulation relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standards of safety in air transportation that existed when the ADA was enacted. The

changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were fairly rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On May 8, 1986, the FAA adopted SFAR 38-3, which merely extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into an NPRM that will propose consolidation of the certification rules in parts 121 and 135, and will incorporate various provisions of SFAR 38-2 into a new part of the FAR.

Good Cause Justification For Immediate Adoption

Because of unavoidable, administrative delays, SFAR 38-2 terminated on June 1, 1987. The reasons which justified the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to reinstate SFAR 38-2 and to establish a new termination date of June 1, 1989, although the FAA anticipates that a final rule incorporating SFAR 38-2 into the FAR will be published before then. If it is, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Special Federal Aviation Regulation 38-5
Certification and Operating Requirements

Adopted: May 26, 1989

Effective: June 2, 1989

(Published in 54 FR 23864, June 2, 1989)

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941, June 7, 1985]. SFAR 38-2 was reinstated by SFAR 38-4 [52 FR 28938, August 4, 1987] and was amended to extend its termination date to allow time for the FAA, in a separate rulemaking action, to prepare a Notice of Proposed Rulemaking (NPRM) [Notice No 88-16, 53 FR 39852, October 12, 1988] to consolidate the certification rules now in SFAR 38-2, part 121, and part 135 into a new part 119 of the Federal Aviation Regulations (FAR). The FAA stated in SFAR 38-3 and in SFAR 38-4 that having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 [ADA or Act] and the termination of Civil Aeronautics Board (CAB) functions following the CAB sunset, it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the certification rules and incorporate SFAR 38-2 into the FAR. The current termination date for SFAR 38-2 is June 1, 1989. Because the FAA has not completed this rulemaking process it is necessary to extend the current termination date 1 year. If new part 119 is issued before June 1, 1989, or before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the new part 119 final rule in the *Federal Register*.

EFFECTIVE DATE: June 2, 1989. Comments must be received on or before August 1, 1989.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (ACC-10). Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3750.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366, December 14, 1978] in consequence of the ADA (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on

107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 Training and Other Special Purpose Operations.)

On December 27, 1984, the FAA issued SFAR 38-1 [50 FR 450, January 4, 1985], which merely extended the termination date of the regulation and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 [50 FR 23491, June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3, which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16. That notice proposes to consolidate the certification rules in parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4, which reinstated SFAR 38-2 because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-16.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1990. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 2, 1989.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1989).

Special Federal Aviation Regulation 38-6

Certification and Operating Requirements

Adopted: May 30, 1990

Effective: June 5, 1990

(Published in 55 FR 23046, June 5, 1990)

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirement for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the certification and operating requirements rules and incorporate SFAR 38-2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38-2 is June 1, 1990. Because the FAA has not completed that rulemaking process, it is necessary to extend the current termination date 1 year. SFAR 38-2 is extended to ensure that the FAA has adequate time to complete the consolidation of the certification and operating requirements rules; however, if the new consolidation is issued as a final rule before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the publication of the final rule in the *Federal Register*.

DATES: Effective date is June 5, 1990. Comments must be received on or before August 6, 1990.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 Training and Other Special Purpose Operations.)

On December 27, 1984, the FAA issued SFAR 38-1 [50 FR 450; January 4, 1985], which merely extended the termination date of the regulation and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 [50 FR 23491; June 7, 1985], which updated SFAR 38 light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3, which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16. That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new part 119 of the FAR.

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1991. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 5, 1990.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38-2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38-2 is June 1, 1991. Because the FAA has not completed that rulemaking process, a 1-year extension of the termination date is necessary. SFAR 38-2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the publication of the final rule in the *Federal Register*.

DATES: Effective date May 28, 1991. Comments must be received on or before August 5, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 am. and 5 pm.

FOR FURTHER INFORMATION CONTACT: Ms. Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3750.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation

because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3, which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16. That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4, which reinstated SFAR 38-2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-16.

On May 26, 1989, the FAA issued SFAR 38-5, which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, part 121, and part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991 [55 FR 23043].

Currently, the FAA is completing work on the final rule that would make SFAR 38-2 a permanent Federal Aviation Regulation; therefore it is necessary to extend the expiration date for SFAR 38-2 until June 1, 1992.

Good Cause For Immediate Adoption Justification

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1992. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, I certify that the amendment will not have a scant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Admendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective May 28, 1991.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S. C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Special Federal Aviation Regulation 38-8 Certification and Operating Requirements

Adopted: June 1, 1992

Effective: June 1, 1992

(Published in 57 FR 23922, June 4, 1992)

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a

DATES: Effective date—June 1, 1992. Comments must be received on or before August 3, 1992.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3750.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation of hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 Training and Other Special Purpose Operations.)

On December 27, 1984, the FAA issued SFAR 38-1 [50 FR 450; January 4, 1985], which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 [50 FR 23941; June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier

On April 30, 1986, the FAA issued SFAR 38-3 [51 FR 17274; May 9, 1986], which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16 [53 FR 39852; October 12, 1988]. That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4 [52 FR 28938; August 4, 1987], which reinstated SFAR 38-2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-16.

On May 26, 1989, the FAA issued SFAR 38-5 [54 FR 23884; June 2, 1989], which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, part 121, and part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operations" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991. [55 FR 23046; June 5, 1990]. Because of the complexity of the comments, the expiration date for SFAR 38-2 again was extended until June 1, 1992 [56 FR 25450; June 4, 1991].

Based on comments received, the FAA has determined that a different definition of "scheduled operation" should be proposed for public comment. Therefore, in order to allow time to issue the supplemental notice of proposed rulemaking, consider comments, and issue a final rule, it is necessary to extend the expiration date for SFAR 38-2 until June 1, 1993.

Good Cause Justification For Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1993. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 1, 1992.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S. C. 106(g).

Special Federal Aviation Regulation 38-9

Certification and Operating Requirements

Adopted: June 18, 1993

Effective: June 18, 1993

(Published in 58 FR 34514, June 25, 1993)

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38-2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38-2 is June 1, 1993. Because the FAA has not completed that rulemaking process, an extension of the termination date is necessary. SFAR 38-2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the publication of the final rule in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Davis, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load operations, Part 137 Agriculture Aircraft operations, or Part 91 Training and Other Special Purpose Operations.)

On December 27, 1984, the FAA issued SFAR 38-1 [50 FR 450; January 4, 1985], which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 [50 FR 23941; June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3 [51 FR 17274; May 9, 1986], which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents

On May 20, 1989, the FAA issued SFAR 38-2 [54 FR 23046; June 2, 1989], which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, part 121, and part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991 [55 FR 23046; June 5, 1990]. Because of the complexity of the comments, the expiration date for SFAR 38-2 was extended until June 1, 1992 [56 FR 25450; June 4, 1991], and subsequently again extended until June 1, 1993 [57 FR 23922; June 4, 1992].

Based on comments received, the FAA has determined that a different definition of "scheduled operation" should be proposed for public comment. That supplemental notice was published June 8, 1993 [58 FR 32248]; the comment period closes July 23, 1993. However, to allow time to consider comments and issue a final rule, the FAA has determined that it is necessary to extend the expiration date for SFAR 38-2 until June 1, 1995.

Good Cause Justification For Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1995. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 18, 1993.

The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

- (a)(1) Certificates.
- (a)(2) Certification requirements.
- (a)(3) Operating requirements.
- (b) Operations conducted under more than one paragraph.
- (c) Prohibition against operating without certificate or in violation of operations specifications.

2. Certificates and foreign air carrier operations specifications.

- (a) Air Carrier Operating Certificate.
- (b) Operating Certificate.
- (c) Foreign air carrier operations specifications.

3. Operations specifications.

4. Air carriers and those commercial operators engaged in scheduled intrastate common carriage.

- (a)(1) Airplanes, more than 30 seats/7,500 pounds payload, scheduled within 48 States.
- (a)(2) Airplanes, more than 30 seats/7,500 pounds payload, scheduled outside 48 States.
- (a)(3) Airplanes, more than 30 seats/7,500 pounds payload, not scheduled and all cargo.
- (b) Airplanes, 30 seats or less/7,500 or less pounds payload.
- (c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
- (d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.

- (a) Airplanes, 20 or more seats/6,000 or more pounds payload.
- (b) Airplanes, less than 20 seats/less than 6,000 pounds payload.
- (c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
- (d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

6. Definitions.

- (a) Terms in FAR.
 - (1) Domestic/flag/supplemental/commuter.
 - (2) ATCO.
- (b) FAR references to:
 - (1) Domestic air carriers.

- (3) Foreign air carrier.
- (4) Scheduled operations.
- (5) Size of aircraft.
- (6) Maximum payload capacity.
- (7) Empty weight.
- (8) Maximum zero fuel weight.
- (9) Justifiable aircraft equipment.

longer operations, large operations, or both, and prescribes

- (1) The types of operating certificates issued by the Federal Aviation Administration;
- (2) The certification requirements an operator must meet in order to obtain and hold operations specifications for each type of operation conducted and each class and size of aircraft operated; and
- (3) The operating requirements an operator must meet in conducting each type of operation and in operating each class and size of aircraft authorized in its operations specifications.

A person shall be issued only one certificate and all operations shall be conducted under that certificate, regardless of the type of operation or the class or size of aircraft operated. A person holding an air carrier operating certificate may not conduct any operations under the rules of part 125.

(b) Persons conducting operations under more than one paragraph of this SFAR shall meet the certification requirements specified in each paragraph and shall conduct operations in compliance with the requirements of the Federal Aviation Regulations specified in each paragraph for the operation conducted under that paragraph.

(c) Except as provided under this SFAR, no person may operate as an air carrier or as a commercial operator without, or in violation of, a certificate and operations specifications issued under this SFAR.

2. Certificates and foreign air carrier operations specifications.

(a) Persons authorized to conduct operations as an air carrier will be issued an Air Carrier Operating Certificate.

(b) Persons who are not authorized to conduct air carrier operations, but who are authorized to conduct passenger, cargo, or both, operations as a commercial operator will be issued an Operating Certificate.

(c) FAA certificates are not issued to foreign air carriers. Persons authorized to conduct operations in the United States as a foreign air carrier who hold a permit issued under Section 402 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1372), or other appropriate economic or exemption authority issued by the appropriate agency of the United States of America will be issued operations specifications in accordance with the requirements of part 129 and shall conduct their operations within the United States in accordance with those requirements.

3. Operations specifications.

The operations specifications associated with a certificate issued under paragraph 2(a) or (b) and the operations specifications issued under paragraph 2(c) of this SFAR will prescribe the authorizations, limitations and certain procedures under which each type of operation shall be conducted and each class and size of aircraft shall be operated.

4. Air carriers, and those commercial operators engaged in scheduled intrastate common carriage.

Each person who conducts operations as an air carrier or as a commercial operator engaged in scheduled intrastate common carriage of persons or property for compensation or hire in air commerce with—

(2) Scheduled operations to points outside the 48 contiguous states of the United States and the District of Columbia with those airplanes in accordance with the requirements of part 121 applicable to flag air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) All-cargo operations and operations that are not scheduled with those airplanes in accordance with the requirements of part 121 applicable to supplemental air carriers, and shall be issued operations specifications for those operations in accordance with those requirements; except the Administrator may authorize those operations to be conducted under paragraph (4)(a)(1) or (2) of this paragraph.

(b) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in part 135, and conduct its operations with those airplanes in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements; except that the Administrator may authorize a person conducting operations in transport category airplanes to conduct those operations in accordance with the requirements of paragraph 4(a) of this paragraph.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.

Each person, other than a person conducting operations under paragraph 2(c) or 4 of this SFAR, who conducts operations with—

(a) Airplanes having a passenger seating configuration of 20 or more, excluding any required crewmember seat, or a maximum payload capacity of 6,000 pounds or more, shall comply with the certification requirements in part 125, and conduct its operations with those airplanes in accordance with the requirements of part 125, and shall be issued operations specifications in accordance with those requirements, or shall comply with an appropriate deviation authority.

(b) Airplanes having a maximum passenger seating configuration of less than 20 seats, excluding any required crewmember seat, and a maximum payload capacity of less than 6,000 pounds shall comply with the certification requirements in part 135, and conduct its operations in those airplanes in accordance with the requirements of part 135, and shall be issued operations specifications in accordance with those requirements.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification require-

6. Definitions.

(a) Wherever in the Federal Aviation Regulations the terms—

(1) “Domestic air carrier operating certificate,” “flag air carrier operating certificate,” “supplemental air carrier operating certificate,” or “commuter air carrier (in the context of Air Carrier Operating Certificate) appears, it shall be deemed to mean an “Air Carrier Operating Certificate” issued and maintained under this SFAR.

(2) “ATCO operating certificate” appears, it shall be deemed to mean either an “Air Carrier Operating Certificate” or “Operating Certificate,” as is appropriate to the context of the regulation. All other references to an operating certificate shall be deemed to mean an “Operating Certificate” issued under this SFAR unless the context indicates the reference is to an Air Carrier Operating Certificate.

(b) Wherever in the Federal Aviation Regulations a regulation applies to—

(1) “Domestic air carriers,” it will be deemed to mean a regulation that applies to scheduled operations solely within the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(1) of this SFAR.

(2) “Flag air carriers,” it will be deemed to mean a regulation that applies to scheduled operations to any point outside the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(2) of this SFAR.

(3) “Supplemental air carriers,” it will be deemed to mean a regulation that applies to charter and all-cargo operations conducted by persons described in paragraph 4(a)(3) of this SFAR.

(4) “Commuter air carriers,” it will be deemed to mean a regulation that applies to scheduled passenger carrying operations, with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules, conducted by persons described in paragraph 4(b) or (c) of this SFAR. This definition does not apply to part 93 of this chapter.

(c) For the purpose of this SFAR, the term—

(1) “Air carrier” means a person who meets the definition of an air carrier as defined in the Federal Aviation Act of 1958, as amended.

(2) “Commercial operator” means a person, other than an air carrier, who conducts operations in air commerce carrying persons or property for compensation or hire.

(3) “Foreign air carrier” means any person other than a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(4) “Scheduled operations” means operations that are conducted in accordance with a published schedule for passenger operations which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

(5) “Size of aircraft” means an aircraft’s size as determined by its seating configuration or payload capacity, or both.

(6) “Maximum payload capacity” means:

and fuel is as follows:

(A) Crew—200 pounds for each crewmember required by the Federal Aviation Regulations.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(7) “Empty weight” means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(8) “Maximum zero fuel weight” means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, or the approved Aircraft Flight Manual, or both.

(9) “Justifiable aircraft equipment” means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

This Special Federal Aviation Regulation No. 38-2 terminates [June 1, 1995], or the effective date of the codification of SFAR 38-2 into the Federal Aviation Regulations, whichever occurs first.
